

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 89-481-C - ORDER NO. 90-614 ✓
JUNE 11, 1990

IN RE:

Application of Southern Bell)	
Telephone and Telegraph Com-	)	ORDER DENYING PETITION
pany for Approval of New VG/	)	FOR RECONSIDERATION AND
ELG Depreciation Rates and	)	AFFIRMING ORDER NO. 90-330
Amortization Schedules)	
)	
)	
)	

This matter comes before the Public Service Commission of South Carolina ("the Commission") by virtue of a Petition for Rehearing and Reconsideration ("Petition") filed by the Consumer Advocate of South Carolina ("Consumer Advocate") whereby it has asked the Commission to rehear or reconsider Order No. 90-330 issued in the above-referenced matter. Therein, the Commission granted to Southern Bell Telephone and Telegraph Company ("Southern Bell") additional intrastate depreciation expense of \$14.8 million from an original company-proposed increase of \$30.0 million in intrastate depreciation expense.¹ Having received the Petition of the Consumer Advocate, the Commission has determined that a reconsideration of the record from which it garnered the facts which formed the basis for its initial decision is unwarranted.² The Commission continues to support Order No. 90-330, which is

¹Hearing Exhibit No. 1, Statement B; and Order No. 90-330, both of which are part of the record in this case.

²By Order No. 90-571, which is incorporated herein by reference, the Petition of the South Carolina Cable Television Association was likewise denied.

hereby affirmed and further clarifies and supports its Order as follows:

THE CONSUMER ADVOCATE'S CONTENTION THAT NO EVIDENCE EXISTS TO SUPPORT THE LIVES ESTABLISHED FOR FIBER OPTIC CABLE IS MISPLACED

Southern Bell presented at hearing its depreciation expert Prophitt who sponsored testimony concerning the propriety of the Company's proposed lives for the different classes of plant, including those specific accounts to which fiber optic cable is "booked." In addition, and without objection, witness Prophitt sponsored Hearing Exhibit One, and Staff witness McDaniel sponsored Hearing Exhibit Eight, both of which were accepted into evidence and both of which support the Company's application in all its relevant particulars, including economic lives.

In arriving at all of the changes proposed by Southern Bell, the Company relied chiefly upon forecasting methodologies known as "Fisher-Pry" and technology life cycle analyses. No evidence was introduced to rebut the accuracy of these forecasting models. (Tr. Vol. I, pp. 34-36)³ Having employed that technology and having reached a tentative settlement for the "fiber" cable accounts with the FCC and PSC staff, the Company proposed and the Commission approved NO CHANGES in the projection lives, i.e. how

³For a detailed discussion of the tools utilized by the Company and accepted by the Commission, see Order No. 90-571, pp. 13-22. That Order is incorporated herein by reference as if set forth fully hereby.

long a type of plant will be in service, for accounts 2421.2, 2422.2 and 2423.2, known as the "fiber cable accounts."

Indeed, there was absolutely no controversy at hearing as to the propriety of the Company's proposals related to its non-metallic cable accounts. All of the testimony offered, including that of intervenor witnesses Montgomery and Newber, support the continuation, if not the shortening, of the projection life estimates for the classes of this plant. There was, however, a great deal of discussion concerning the use and deployment of fiber in the network. (See e.g. Hearing Exhibit One, General Cable Narrative, All States Narrative; Order No. 90-571). Therefore, it is still the Commission's opinion that notwithstanding the continuing deployment of fiber throughout Southern Bell's network, the following lives for the aforementioned accounts are appropriate.⁴

Account	Projection Life Approved by Order No. 90-330	Existing Projection Life
2421.2	25 yrs.	25 yrs.
2422.2	30 yrs.	30 yrs.
2423.2	25 yrs.	25 yrs.

Prior to addressing the remainder of the Consumer Advocate's Petition, the Commission would be remiss if it did not restate the means by which depreciation rates are established. As explained in Order No. 90-571, and as endorsed by Mr. Justice Brandeis in United R. & Electric Co. of Baltimore v. West, 280 U.S.

⁴Hearing Exhibits One, Subpart 3; Eight.

254, 262, 50 S.Ct. 123, the setting of rates and lives for various classes of telephone plant is not an exact science. No one can forecast the future with exact certainty. That is the exact reason why both federal and state regulatory agencies come together every three years to attempt to "true up" the depreciation estimates of telephone utilities. In recent years, the Consumer Advocate has also participated in settlement discussion between the various regulatory staffs and Southern Bell, both with and without expert witness participation. That process has served both the utility and the State of South Carolina well. (See, e.g. Tr. Vol. I, pp. 20, 21, 24-25; Tr. Vol. II, pp. 36-39)

As stated by Justice Brandeis:

There is nothing in business experience or in the training of experts, which enable men to say to what extent service life will be impaired by the operation of a single year or of a series of years ... it is never possible to determine with accuracy what percentage of the unit's service life has, in fact, been consumed. Nor is it essential to the aim of the charge that this fact should be known. The main purpose of the charge is that irrespective of the rate of depreciation there shall be produced, through annual contributions, by the end of the service life of the depreciable plant, an amount equal to the total net expense of its retirement.

Id. at 262.

Not only has the Commission utilized its specialized expertise, recognized by the General Assembly and the Courts of this State (see, e.g. Code Section 1-23-330(4); Parker v. P.S.C., 314, S.E.2d 148 (S.C. 1984)), but it has analyzed carefully

Hearing Exhibit One, and all other testimony and exhibits. Without exception, the findings and conclusions reached, just as in the case of establishing rates of return on equity, are within the range of the evidence presented.

THE CONSUMER ADVOCATE'S ASSERTIONS REGARDING THE COMMISSION'S APPROVAL OF LIVES FOR TWO OF THE SWITCHING ACCOUNTS ARE ERRONEOUS

In paragraphs five and six of its Petition, the Consumer Advocate asserts that the Commission erred in lowering the lives of certain digital and analog switching equipment deployed in Southern Bell's network. The Petition asserts also that no findings of fact in this regard were made.

In responding to these allegations, the Commission must first point out that the Consumer Advocate has misread our Order from which he asks reconsideration. In regards to Account 2211, Electronic Switching - Analog, the Consumer Advocate asserts that the projection life was reduced from 14.5 years to 11 years. That is not correct. While the Company's Study (Hearing Exhibit One, General Electronic Switching Narrative; Subpart 3) would support a reduced life of eleven years, the Staff recommended and the Commission approved a projection life of 12.5 years, well within the range of estimated lives presented. (See, also, Tr. Vol. II, p. 45) Indeed, Southern Bell has retired 298% more analog switching equipment during the 1986-88 time frame than it forecast in 1986 (Hearing Exhibit One). Similarly, as to Account 2212, Electronic Switching - Digital, the Consumer Advocate confuses the

Company's originally proposed life with the projection life approved by the Commission. The Company's Study (Hearing Exhibit One, Subpart 3; General Electronic Switching Narrative) reflects the 17 year life addressed by the Consumer Advocate. However, the "reduction" from 20 years to 17 years in this account has not been approved by the Commission's Order. The projection life for this account remains at twenty years. (See e.g. Hearing Exhibit One, General Electronic Switching Narrative, pp. 4-13) The "action" of which the Consumer Advocate complains simply did not occur.

THE COMPANY HAS RETAINED THE BURDEN OF PROOF IN THIS PROCEEDING

The Consumer Advocate next argues that the Commission erroneously shifted the burden of proof from the Company to it in reaching the decision in this docket. That is not correct. It is indisputable that, as the Applicant, Southern Bell carried the burden of proof in convincing the Commission of the propriety of the tentative settlement agreement reached between it and the Commission staff. While that burden does not shift, the law in South Carolina is clear that the "burden of going forward" or "burden of evidence" may shift.

Where, as here, the Applicant has made a prima facie showing, the burden of going forward to explain away the case shifts to the Consumer Advocate. 29 Am. Jur. 2d Evidence, Section 126. In the hearing of this matter, the Company, intervenor SCCTA and the staff sponsored testimony of their respective experts.

Each of these witnesses supported the lives proposed for the fiber and switching accounts. The Consumer Advocate, having produced no testimony to support its disagreement with the Commission's findings, has simply failed to accept the legal conclusion that the Company fulfilled its burden. The uncontroverted testimony concerning the propriety of the Company's proposal, coupled with lengthy discussion in the record concerning those few accounts where controversy did exist, convinced the Commission that the level of additional depreciation expense approved by Order No. 90-330 was and is appropriate. There has not been any shifting of the burden of proof to the Consumer Advocate.

THE REDUCTION IN PROJECTION LIVES FOR THE METALLIC CABLE ACCOUNTS IS APPROPRIATE.

Finally, the Consumer Advocate asserts error in the Commission's acceptance of the proposed settlement in the three metallic cable accounts, 2421.1, 2422.1 and 2423.1. Order No. 90-571, in supplementing Order No. 90-330, discusses in detail the analysis, thought process and evidence relied upon and that argument need not be restated. Reference instead is made to Order No. 90-571 at pages 19-30.

Having then disposed of the concerns raised by the Consumer Advocate, the Findings of Fact and Conclusions of Law in Orders No. 90-330 and 90-571 are supplemented as follows:

FINDINGS OF FACT

1. The Findings set forth in Orders No. 90-330 and 90-571 are incorporated herein by reference as if set forth fully hereby.

2. The Southern Bell Electronic Switching account has undergone dramatic change since the 1986 rescription. Digital ESS represented 30% of total switching machines in 1986. In just three years, that percentage has increased to 67% (Hearing Exhibit One, Electronic Switching, p. 1)

3. Eliminating analog to digital interfaces with digital switching machines saves both the cost and maintenance of these devices. They are particularly well-suited to the fast growing Southern Bell region of which South Carolina is a part. (Hearing Exhibit One, Electronic Switching, p.1)

4. The 1990's and the so-called "Information Age" will result in additional demands being placed on the network and will accelerate the obsolescence of present analog switches. (Hearing Exhibit One, Electronic Switching, p. 5)

5. Life cycle analyses can and, in this case, do produce accurate economic life estimates of existing equipment even if the exact technical nature of its replacement is not known. (Hearing Exhibit One, Electronic Switching, p. 7)

6. Historically, switching technologies have followed transmission technologies. Space-division metallic switching followed analog copper transmission and digital time-division switching followed digital multiplex transmission. It follows that an optical switch would be the next major step before toward processing information transmitted over fiber optic systems. Trends in photonic (optic) technology indicate that practical applications of optical switching will become the preferred technology during the early part of the next century. (Hearing Exhibit One, Electronic Switching, p. 12)

7. The appropriate projection life for Account 2211, Electronic Switching - Analog is 12.5 years, a life estimate within the range of the evidence. (Hearing Exhibit One, General Electronic Switching Narrative; Subpart B; Tr. Vol. II, p. 45; Hearing Exhibit Eight). As to Account 2212, Electronic Switching - Digital, no change to the existing 20 year life estimate is appropriate. (Hearing Exhibit One; Subpart 3; Electronic Switching; Hearing Exhibit Eight)

8. The cost of deploying fiber optics into the network was demonstrated to decrease in the approximate amount of 10% per year. (Tr. Vol. I, p. 30)

9. As fiber becomes more economical than copper in the mid-1990's, then the rapid retirement of copper cable will begin. (Tr. Vol. I, p. 31)

10. No evidence was offered in opposition to the lives proposed for Accounts 2421.2, 2422.2 or 2423.2 nor in opposition to the underlying study. (Hearing Exhibit One, General Cable Narrative, All States Narrative, Tr. Vol. I, p. 1 - Tr. Vol. III, p. 51)

11. The approval of appropriate depreciation rates lessens a Company's overall revenue requirement over the long term. (Tr. Vol. II, pp. 59-60)

12. The lives approved in Accounts 2421.2, 2422.2 and 2423.2 are consistent with the testimony and evidentiary exhibits presented to the Commission, even though the Commission did not change the presently prescribed lives of these classes of plant. (Tr. Vol. I, pp. 30-31; Hearing Exhibit One, General Cable Narrative; All State Summary; Subparts 4, 5, 6, 7; Hearing Exhibit Eight)

CONCLUSIONS OF LAW

1. The Conclusions of Law set forth in Orders No. 90-330 and 90-571 are incorporated herein by reference as if set forth fully hereby.

2. Southern Bell maintained the burden of proof throughout this proceeding and, upon a review of the Transcript of Record and Hearing Exhibits, the Commission concludes, as a matter of law, that Southern Bell met that burden.


3. The Rules of Evidence as applied in civil cases in the Courts of Common Pleas of this state likewise apply in hearings before the Commission, including this docket. Rule 103-870.

NOW THEREFORE, having reconsidered the record in the specific context of the issues raised by the Consumer Advocate,

IT IS ORDERED:

1. That Order No. 90-330 is affirmed and is supplemented by the provisions of this Order including the narrative portion, findings and conclusions hereof.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-353-C - ORDER NO. 90-794 ✓
AUGUST 21, 1990

IN RE: Application by GTE South, Inc., for	) ORDER GRANTING
revisions to its General Customer	) REQUEST TO
Service Tariff Section Nos. S5 and	) WITHDRAW
S22 in connection with E911 service	) PARTICIPATION,
in Horry County. (Tariff No. 90-48)	) APPROVING
	) REVISED TARIFF
	) AND CLOSING
	) DOCKET

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed on March 28, 1990, on behalf of GTE South, Incorporated, (GTE) requesting approval of revisions to its Customer Services Tariff. According to the application, the purpose of the proposed revisions is to provide E911 service to all subscriber lines located within limits and boundaries of Horry county, South Carolina. This service is a joint offering between GTE South and Horry Telephone Cooperative, Inc. The tariff was filed pursuant to the Commission's policies and procedures.

This matter was duly noticed to the public and a Petition to Intervene was filed on behalf of Steven W. Hamm, the Consumer Advocate for the State of South Carolina (the Consumer Advocate). A public hearing was scheduled to commence at 10:30 a.m., on Wednesday, September 12, 1990, at the Commission's Hearing Room, 111 Doctor's Circle, Columbia, South Carolina.

Thereafter, the Consumer Advocate informed the Commission by letter received July 30, 1990, that after reviewing the filing and discussing the matter with the Commission staff, the Consumer Advocate had concluded that the proposed rates were just and reasonable, and that therefore the Consumer Advocate no longer wished to participate in the hearing in this matter. The Commission finds that the Consumer Advocate should be allowed to withdraw his participation in the said hearing.

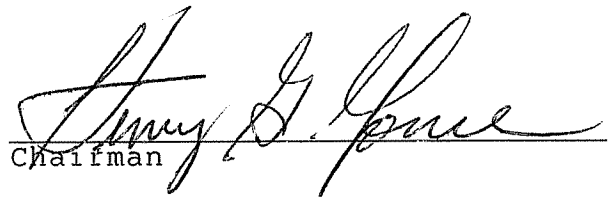
Based upon the Commission's review of the Application and the documents filed in this matter, the withdrawal of participation by the Consumer Advocate and the absence of other intervention or protest of this matter, the Commission has determined that the scheduled hearing should be and hereby is cancelled. In light of the above, the Commission finds that the revisions by GTE to its General Customer Service Tariff Section Nos. S5 and S22 in connection with E911 service in Horry County are in the public interest and should be and hereby are approved. The docket in this matter is hereby closed.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

VICE

Chairman



ATTEST:


Executive Director
(SEAL)